DOCKET FILE COPY ORIGINAL

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

MICHAEL K. KELLOGG
PETER W. HUBER
MARK C. HANSEN
K. CHRIS TODD
MARK L. EVANS
STEVEN F. BENZ

NEIL M. GORSUCH
GEOFFREY M. KLINEBERG
REID M. FIGEL
HENK BRANDS
SEAN A. LEV
COURTNEY SIMMONS ELWOOD
EVAN T. LEO

October 31, 2000

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Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128

Dear Ms. Salas:

Enclosed for filing please find the original and five copies of the Reply Comments of the RBOC Payphone Coalition in the above-referenced proceeding. Please date stamp and return the additional copy.

If you have any questions concerning this filing, please contact me at (202) 326-7921.

Sincerely,

Aaron M. Panner

Aaron M. Panner

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF THE RBOC PAYPHONE COALITION

Michael K. Kellogg
Aaron M. Panner
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3209
(202) 326-7900

Counsel for the RBOC Payphone Coalition

October 31, 2000

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Provisions of the Telecommunications	)	
Act of 1996	)	

REPLY COMMENTS OF THE RBOC PAYPHONE COALITION

SUMMARY AND INTRODUCTION

The RBOC Payphone Coalition (the "Coalition") hereby replies to the Comments filed in response to its proposal to resolve interim period compensation obligations. The Coalition has proposed resolving the interim compensation issue by setting each carrier's interim period obligation based on the per-call compensation obligations actually incurred by the carrier during the first corresponding per-call compensation period (the "first option"). Alternatively, the Coalition proposed allocating compensation obligations — using the Commission's previous estimate of 131 compensable calls per month carried by IXCs — based on 800 toll revenues (the "second option").

For the most part, the IXCs' response to the Coalition's proposal has been constructive. Sprint supports the first option; Cable & Wireless/Global Crossing ("Cable & Wireless"), and One Call Communications give the first option qualified support (or at least do not oppose it). AT&T and WorldCom support the second option, although WorldCom advocates using total toll revenues, rather than 800 toll revenues, as an allocator. APCC also prefers to allocate per-phone obligations, although both APCC and Excel Communications, *et al.* ("Excel"), prefer the status quo.

The Coalition continues to believe that the first option provides the best resolution to the interim compensation issue; the concerns that have been raised concerning that methodology do not provide a valid basis for abandoning its administrative simplicity. At the same time, the Coalition would not oppose the adoption of the Coalition's second option. Most important for the Coalition is to secure a resolution to this issue as soon as possible, so that the Coalition's members can finally close their books on these three-year-old obligations. The Commission has allowed this issue to hang fire for more than three years; the time for action is long past due.

None of the comments provides any basis for further delay. Notably, no one seriously argues that there is any procedural obstacle to immediate Commission action. And the two threshold objections to Commission action are without merit. Excel argues that resolution of carriers' interim obligations would amount to "retroactive rulemaking." But the FCC has held from the first that carriers are required to pay compensation for calls from payphones; the interim compensation plan was simply a methodology for implementing that obligation. In other words, a revised interim compensation plan will not create any new obligation; it will simply provide a revised method for carriers to use in calculating their payments. Indeed, the D.C. Circuit made clear in *Payphones I* that the Commission had properly required the payment of compensation during the interim period.

The APCC argues that the Commission should preserve the status quo based on supposed "equitable considerations." But the D.C. Circuit specifically noted, in *Payphones II*, that the FCC has authority — and suggested that it has the obligation — to order a true-up of compensation paid at the \$.284 rate. IXCs should be required to pay what they owe, not more and not less — "equitable considerations" do not enter into the calculation.

The principal objection to the use of corresponding period payments to set obligations for the interim period is that payments for 1998 were inaccurate, particularly for independent PSPs, because of inefficient implementation of Flex ANI. The APCC makes a fair point that this problem — whatever its scope — may have affected independents more than some LEC-affiliated PSPs. At the same time, independents are pursuing this issue with IXCs, and the Coalition has proposed that whatever resolution PSPs and IXCs reach with respect to the corresponding period also applies to the interim compensation period. This should provide all PSPs with an adequate remedy for underpayments by IXCs — whether as a result of Flex ANI implementation, or because IXCs have failed to pay obligations incurred by resellers.

Other commenters argue that, because call volumes and patterns change, the corresponding period of 1998 will not provide a perfect estimate for call volumes in 1997. In fact, no commenter gives the Commission any reason to believe that use of the corresponding period does not provide the best available estimate of call volumes in 1997. And WorldCom's claim that the first option will create unnecessary administrative burdens has the matter backwards: the first option should facilitate rapid settlement between PSPs and IXCs across the industry and creates no unnecessary administrative problem.

If the Commission instead adopts the Coalition's second option, it should not follow WorldCom's suggestion of using total toll revenues as a proxy for compensable calling from payphones — indeed, the D.C. Circuit has already indicated that such a methodology would be inappropriate. Instead, the Commission should use 800 toll revenues as a proxy — a choice that the Commission can justify because a large majority of compensable calls *are* 800 calls. In addition, the Commission should follow the suggestion of AT&T and Cable & Wireless and require that interim payments for 0+ calls — where required — are paid according to actual call volumes from the affected payphones. WorldCom's suggestion that such obligations can be allocated among all carriers — rather than the presubscribed carrier for the particular payphones — is unjustifiable.

The Coalition also addresses additional proposed adjustments to the Coalition's proposal. Cable & Wireless's suggestion that the 1998 call volumes should be arbitrarily adjusted downward to account for supposed increases in compensable call volumes between 1997 and 1998 is wholly unsupported by the record; no other IXC commenter reports a similar increase. The Coalition believes that the corresponding period for purposes of calculating the interim obligation should be the per-call period one year after the interim period (contrary to Sprint's suggestion of using the overall overage for 1998) because Sprint's method would ignore seasonal variation. And the Commission should continue to use 11.25% to determine the interest that IXCs (and PSPs) should pay on outstanding obligations; that figure reflects the parties weighted cost of capital, and accurately reflects the burden (and benefit) of the failure to effect a transfer of these funds in a timely way.

DISCUSSION

I. THE TIME FOR ACTION ON INTERIM COMPENSATION IS PAST DUE

The Commission's public notice seeking comment on the Coalition's interim compensation proposal provides a welcome indication that the Commission is preparing to move quickly to resolve this issue. Such action is long overdue. Under the current per-call rates, RBOC PSPs are owed well over $200 million in compensation, an obligation that has been pending for more than three years.

The IXCs' response to the Coalition proposal underlines the need for prompt action. With the exception of the comments filed by Excel, IXCs acknowledge their obligation to pay interim compensation, support quick resolution of this issue, and have advocated one of the two basic approaches to interim compensation discussed in the Coalition proposal. *See*, *e.g.*, AT&T Comments at 1 ("AT&T agrees that the remaining issues relating to the Interim Period should be resolved promptly."); Sprint Comments at 7. As the Coalition explains below, the interim compensation methodology proposed in the Coalition's August 8, 2000 letter to Chairman Kennard provides the best solution to the issue; none of the objections raised by commenters outweighs its accuracy and simplicity. At the same time, the Coalition would not oppose an interim compensation plan built around allocation of a per-phone obligation, based on the 131-call figure the Commission used in the original *Payphone Orders*. For the Coalition, the first priority is adoption of an interim compensation plan that will withstand any potential appellate review on the quickest possible timetable.

In this regard, it is important to note that even those parties that would prefer to delay resolution of this issue do not claim that there is any *procedural* obstacle to Commission action.[1]

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[1] The APCC claims that consideration of the proposal is "premature" until the Commission has made a "final determination" as to whether any retroactive adjustment of payments for the Interim Period and the period of per-call compensation at the $.284 rate "is warranted by equitable considerations." APCC Comments at 4. In fact, the Commission has already determined that it would "establish[] a compensation amount for the Interim Period" and that "PSPs will be obligated to refund overpayments for the October 1997 period." Third Report and Order, and Order on Reconsideration of the Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545, 2636, ¶ 197 (1999) ("*Third Report and Order*"). Whether or not

Indeed, only the APCC and Excel claim that it would be inappropriate to adopt an interim compensation plan at this time; their arguments, however, are without merit.

Excel argues that section 276 does not require payment of compensation to PSPs during the interim period, and that the Commission should abandon its prior efforts to set interim compensation because "no method of compensation during the Interim Period can truly reflect the actual traffic for that time frame." Excel Comments at 23. This argument is based on two fundamental errors. First, by its terms, section 276 of the Act *does* require the FCC to adopt regulations to ensure that PSPs receive fair compensation for all calls "within 9 months after [the date of enactment of the Telecommunications Act of 1996]." 47 U.S.C. § 276(b)(1). The claim that this "contains no requirement that compensation begin" within that time (Excel Comments at 21) makes nonsense of the deadline that Congress imposed; if Excel is to be believed, Congress intended to permit the Commission to *deprive* PSPs of fair compensation for payphone calls indefinitely — so long as regulations were adopted to establish a compensation mechanism at some future time. That reading is impossible to square with the language of the statute, or the Commission's prior actions.

Nor is there any merit to the claim that only a perfect per-call scheme can afford PSPs fair compensation. The FCC has long used per-phone compensation mechanisms to ensure that PSPs receive compensation for calls not otherwise compensated, such as dial-around calls. The two basic proposals before the Commission, if implemented, would each ensure that PSPs would

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reconsideration petitions are pending as to those determinations, they are binding on all parties. The APCC does not and cannot argue that the Commission has any legal obligation to rule on pending reconsideration petitions before resolving the interim compensation issue.

receive — and that IXCs would pay — fair compensation for the services that PSPs provided to IXCs throughout the interim period.

Excel also briefly argues that acting on the D.C. Circuit's remand would constitute "retroactive rulemaking." Excel Comments at 24. That is incorrect: in the original *Payphone Orders*, the Commission determined that IXCs would be responsible for paying PSPs compensation for all completed long-distance calls for which PSPs are not otherwise compensated.[2] The interim compensation mechanism established in those orders was simply a methodology for dividing that obligation among IXCs in the period before the per-call tracking mechanism was in place. In other words, under the plain language of the FCC's rules then in effect, IXCs were always obligated to pay compensation to PSPs. Indeeed, when the D.C. Circuit vacated the original interim compensation plan, it did not question that IXCs would remain subject to compensation obligations during the interim period; to the contrary, the D.C. Circuit affirmatively required the Commission to *add* 0+ calls from certain RBOC phones to the compensation mechanism for the interim period. *See Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555, 565-66 (D.C. Cir. 1997) ("*Payphones I*"), *clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997), *cert. denied*, 523 U.S. 1046 (1998). If there were any question about the Commission's authority to implement an interim compensation mechanism after remand, such a ruling would have been nonsensical.[3]

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[2] *See* 47 C.F.R. § 64.1300(a) and (c); Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, 20722, App. E (1996) ("*First Report and Order*").

[3] Excel does not argue that the rulemaking would be particularly "retroactive" with respect to carriers that were not subject to the original interim compensation obligation because their long-distance revenues were less than $100 million annually; in any event, such an argument

APCC argues that the Commission should neither act on interim compensation nor adopt a true-up of per-call compensation paid at the $.284 rate, in the case of independent PSPs, based on "equitable considerations." Neither of these supposed considerations — the argument that the Commission set compensation for independent PSPs too low during the period before the current compensation regime went into effect, and the fact that IXCs have over-recovered from their own customers for compensation paid both during the interim period and during the period the $.284 rate was in effect — justifies Commission inaction. The APCC does not claim — and could not show — that failure to resolve the interim compensation issue would bring IXCs any windfall; once compensation obligations owed to RBOC PSPs are taken into account, IXCs will certainly pay more in interim compensation than they will receive in refunds based on any true-up of payments at the $.284 rate. In other words, independent PSPs believe that they will benefit from maintenance of the status quo, but they have not explained why it is inequitable for IXCs simply to be required to pay what they owe, neither more nor less.

Any other course would invite reversal in the D.C. Circuit. When the court left the $.284 rate in effect pending remand after *Payphones II*, it did so "on the clear understanding that if and when on remand the Commission establishes some different rate of fair compensation for coinless payphone calls, the Commission may order payphone service providers to refund to their customers any excess charges for coinless calls collected pursuant to the current rate." *MCI*

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would be incorrect. Again, the Commission determined that, as of the effective date of its orders, carriers were obligated to pay compensation for calls routed to them from payphones. The Commission must now clarify the method for calculation of that obligation; it is not creating an obligation that did not previously exist. Indeed, small IXCs were parties to the proceeding in the D.C. Circuit in which the method of calculation was challenged and therefore have been aware all along that the original interim compensation methodology — which created an *exemption* from an underlying obligation for small IXCs — was subject to reversal on appeal.

Telecomms. Corp. v. FCC, 143 F.3d 606, 609 (D.C. Cir. 1998) ("*Payphones II*"). The Commission has already concluded that it would adopt a true-up; its decision to delay the true-up until interim compensation was resolved was designed to avoid any harm to PSPs. *Third Report and Order*, 14 FCC Rcd at 2636, ¶ 198. If resolution of compensation obligations *does* threaten harm to independent PSPs — perhaps because independent PSPs will be net payors — they may seek special relief from the Commission — for example, payment in installments — to avoid a shock to their businesses. But there can be no justification for the Commission allowing the status quo to continue simply because it provides the APCC or other private parties a benefit.[4]

II. USE OF CALL VOLUMES FROM THE CORRESPONDING PERIOD PROVIDES THE BEST METHOD FOR SETTING INTERIM PERIOD OBLIGATIONS

The Coalition's first option has at least three significant advantages. First, it would relieve the Commission of the need to allocate compensation obligations among carriers — a task that has already tripped up the Commission once, and that the comments in this proceeding do little to facilitate. Second, this approach would leave it largely to private parties to resolve their obligations; to the extent the parties have disputes about obligations incurred during the corresponding period, resolution of those disputes would govern the interim period as well. Third, the methodology would be fair and accurate. In criticizing the Coalition's first option, the parties take issue especially with the last of these three points; WorldCom also challenges the

[4] Nothing in the prior D.C. Circuit decisions dealing with refunds of amounts paid under filed tariffs — which the APCC cites without suggesting that their facts are applicable here — suggests any different result.

administrative benefits of the proposal. None of these objections undermines the Coalition's proposal.[5]

A. The Coalition's Proposed Methodology Provides an Accurate Estimate of Call Volumes During the Interim Period

Various commenters argue that call volume information from the corresponding period of 1998 provides an inaccurate estimate of calls made from payphones during the interim period, either because those numbers are systematically too low (APCC) or too high (Cable & Wireless). These objections miss the mark.

APCC argues that the call volume figures for 1998 understated actual call volumes because of inefficient implementation of the Flex ANI tracking system by LECs and IXCs in 1998. APCC Comments at 14-17; *see also* AT&T Comments at 2; WorldCom Comments at 8. As the Coalition understands this objection, it has two aspects. First, because many LECs had not implemented Flex ANI for some lines used by smart payphones during the corresponding per-call period of 1997-98, no call volume data are available for those smart payphones. Second, because Flex ANI digits have not always been reliably processed, some IXCs may have understated the number of calls for which they owe compensation during the initial year of per-call compensation.

The Flex ANI issue is one that is worth consideration, and it is true that Flex ANI implementation issues are, for the most part, of greater concern to independents than to LEC PSPs because most LECs have a larger base of payphones connected to smart lines, which passed

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[5] Several parties ask that the Commission clarify the Coalition's proposal in ways that are consistent with the Coalition's approach. The Coalition agrees that: 1) The interim compensation obligation should be based on the $.238 rate, not the current $.24 rate (*see* Sprint Comments at 2; Cable & Wireless Comments at 5); and 2) RBOC PSPs are entitled to compensation from April 15, 1997, until October 6, 1997 (*see* One Call Comments at 2; Cable & Wireless Comments at 7-8). The Coalition has never suggested otherwise.

payphone specific digits before implementation of Flex ANI.[6] Ultimately, however, neither aspect of the Flex ANI issue poses a serious obstacle to the Coalition's proposal. The Commission has already adopted a mechanism to ensure fair compensation for payphones that were served by switches that were not Flex ANI capable during the corresponding period — the per-phone compensation methodology set out in the *April 3 Waiver Order*. The Commission should provide that whatever call volume the carrier used to calculate the per-payphone obligation during the corresponding per-call period should also apply to the interim period. As for the APCC's concerns about "erratic" payment patterns due to Flex ANI being passed on some calls but not on others, the APCC itself has stated that this issue is already the subject of litigation aimed at resolving parties' obligations. That resolution will apply to the interim period just as it applies to the corresponding per-call period; the Coalition's methodology thus minimizes the number of additional disputes that will result from adoption of an interim compensation mechanism.

The same reasoning applies to the APCC's concerns about the reseller issue. As the Coalition has explained in detail elsewhere, some IXCs have seized on the supposed lack of clarity in the Commission's rules concerning the obligations of certain resellers to pay per-call compensation to reduce their payments during the per-call period. This is an issue that continues to be the subject of dispute between members of the Coalition and IXCs; it is hoped that the Commission will soon provide guidance that will facilitate a negotiated solution to this

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[6] *See* Memorandum Opinion and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 10893 (1998) ("*April 3 Waiver Order*"). It is worth emphasizing, however, that BellSouth's payphones are almost entirely smart payphones; BellSouth nonetheless joins the rest of the Coalition in supporting the first option.

disagreement. In any case, the resolution of these disputes would govern the interim compensation period as well as the per-call period under the Coalition's proposal.

Cable & Wireless suggests that the number of compensable calls generated by payphones increased between 1997 and 1998 and that therefore use of call volumes from the corresponding period will lead to overcompensation. In fact, nothing in the record of this proceeding supports that argument. Even if data in the record supported the claim that call volumes increased between 1996 and 1997 — and Cable & Wireless admits that the data may not be representative — the only evidence suggesting that compensable calls increased between 1997 and 1998 is the unsubstantiated claim by Cable & Wireless that its own number of compensable calls per phone increased between fourth quarter 1997 and fourth quarter 1998. *See* Cable & Wireless Comments at 10. No other IXC, however, supports this claim.[7] Even Global Crossing — a far larger IXC than Cable & Wireless — does not attempt to corroborate Cable & Wireless's data, even though it has filed joint comments.[8]

The Coalition's proprietary data tend to show that non-coin call volumes were in fact generally lower in 1998 than in 1997. Although IXCs did continue to promote migration of 0+ calling to dial-around calling — a trend that would tend to increase dial-around call volumes —

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[7] WorldCom argues that use of the 1998 period may be inaccurate because it "presumes that call volumes for each ANI for each carrier have remained constant." WorldCom Comments at 8. That is wrong: the Coalition proposal assumes that, on average, the call volumes for each PSP's payphones for each carrier have remained approximately constant, and that any variations among individual payphones will tend to cancel each other out. Notably, WorldCom does not attempt to contradict this assumption with any data, even though WorldCom must have considerable data concerning call volumes throughout the per-call period, if not before.

[8] Excel argues that dial-around calling must have increased between 1997 and 1998 because the number of toll-free numbers increased. Excel Comments at 11. Excel does not and cannot show that one thing has anything to do with the other.

this was apparently more than offset by a decrease in payphone usage due to the proliferation of wireless phones. Accordingly, the Commission should reject calls from Cable & Wireless and Excel for an arbitrary reduction in compensation.

Does this mean that the Coalition's proposal is perfect? Of course not — it is merely the best method available. As Sprint recognizes, "[b]y its nature, no interim plan could ever exactly replicate the operation of a per-call compensation plan during this period, but basing liabilities on the first calendar year of per-call compensation comes close enough. . . . Sprint is not presently aware of any systemic bias toward either the IXCs or the PSPs from using the next-best data." Sprint Comments at 6.

B. The Coalition's Proposal Is Administratively Efficient

A principal benefit of the Coalition's proposal is that it has few "moving parts": the Commission simply establishes the basic rule and allows private parties to resolve the details of their payments based on the arrangements they have made for the corresponding per-call period.

WorldCom, however, argues that the administrative benefits of the plan are overstated. In particular, WorldCom claims that the first option will place an administrative burden on the National Payphone Clearinghouse ("NPC"), apparently because the NPC will be required to identify valid ANIs and amounts paid by each carrier for those ANIs. WorldCom Comments at 6. But no matter what methodology the Commission adopts, PSPs will have to identify ANIs for which interim compensation is owed and determine how much IXCs have already paid during the interim period. The Coalition methodology builds on work that the NPC, PSPs, and IXCs have *already* done in hashing out amounts owed for the first year of per-call compensation.

WorldCom and others also suggest that it may be difficult to resolve the compensation obligations of carriers that are no longer in operation, or that failed to pay per-call compensation. These problems at the margin are inevitable with any interim compensation plan, but the basic answer to all of those situations is the same: whatever resolution the private parties reach (either through negotiation or through litigation) concerning the corresponding period will apply to the interim period as well. And, while parties may speculate that some carriers will have incurred significant obligations during the corresponding per-call period even though they were not in operation during the interim period (*see* Excel Comments at 13), the Commission has no evidence before it to indicate that any such carrier exists.

Sprint's support for the Coalition's proposed solution to the interim compensation issue is welcome; some of its suggested clarifications, however, should be rejected. In particular, Sprint's argument that the Commission should use the monthly average compensation for 1998 rather than the compensation obligation incurred during the corresponding per-call compensation period makes no sense.

As an initial matter, the use of a corresponding period is no "administrative nightmare" (Sprint Comments at 3); only Sprint seems to have been able to identify some ambiguity in the proposal. Interim compensation obligations would be set based on call volumes experienced for the corresponding per-call period one year later. In other words, for independent PSPs, the corresponding period for December 1996 would be December 1997. *See* Cable & Wireless Comments at 6.

Using a monthly average for 1998 is simply not as fair or as accurate as using the corresponding period. Payphone call volumes tend to vary seasonally. In the case of RBOC payphones, the period for which interim compensation is owed — April 15 through October 6 — includes the summer months, traditionally a time of relatively heavy payphone usage.[9] The Coalition would therefore oppose adopting Sprint's suggestion, which appears designed merely to reduce Sprint's per-call obligations without any reasonable justification.

In short, the owner of a payphone ANI during the interim period should be permitted to collect an amount in interim compensation corresponding to the obligation that was incurred for the same payphone in the corresponding per-call period one year later.[10] This is a simple rule that is simple to apply, and the private parties can be expected to apply it with little additional intervention by the Commission.

III. ALLOCATION OF A PER-PAYPHONE OBLIGATION IS A SECOND-BEST SOLUTION

AT&T and WorldCom both propose using a variant on the Commission's previous interim compensation plan, which relies on allocating a per-payphone obligation among IXCs based on an estimate of their relative share of calls from payphones. WorldCom Comments at 8-11; AT&T Comments at 3-4.

The Coalition has no objection to this approach in principle; indeed, the Coalition's second option is the basis for AT&T's proposal. But, as a practical matter, the use of a proxy to allocate

[9] The Coalition would have no objection to using the average daily call volume for the relevant months — which correspond approximately to the second and third quarters of 1998 — multiplied by the number of days for which compensation is due.

[10] As the Coalition proposed, in the case of payphones in service during the interim period but no longer in service during the per-call period, the interim compensation obligation should be set equal to the IXC's average per-phone obligation. Sprint has proposed using the per-phone average obligation for the PSP owner of the phone in question; the Coalition does not oppose that suggested clarification.

the per-payphone obligation entails inevitable appellate risk. In *Payphones I*, the court found that the Commission had provided no evidence that total toll revenues provide a good proxy for determining the distribution of *payphone-originated* calls. It is not clear that the current record provides that evidence. The basic problem is that some IXCs may promote use of dial-around calling — and hence the number of calls from payphones — more than others. For this reason, the Coalition's first option — which relies on actual payphone call volumes from a nearly contemporaneous period — is a preferable solution, both from the point of view of fairness and from the point of view of appellate risk.

AT&T is correct that, if the Commission insists on allocating a per-payphone obligation, the best way to address the court's concerns would be to use toll-free revenues as a proxy for calls from payphones, rather than overall toll revenues. Because a large majority of the compensable calls from payphones are toll-free calls (*see, e.g.*, *First Report and Order*, 11 FCC Rcd 20603-04, ¶ 124), and because it is reasonable to assume that toll-free calling patterns from payphones resemble toll-free calling patterns generally, this figure provides a better proxy than overall toll revenues. Even after adjusting general toll revenues in the manner that WorldCom suggests (WorldCom Comments at 11), it remains uncertain that general toll revenues provide a valid proxy for calls from payphones.[11]

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[11] Two of WorldCom's proposed adjustments are worth comment. WorldCom proposes exempting "pure resellers" from payphone compensation. WorldCom does not indicate how "pure resellers" are to be identified, however, or how the Commission should deal with carriers that engage in both resale and facilities-based service. WorldCom also suggests exempting carriers with revenues under $12 million annually from the per-phone obligation. This is simply a recipe for reversal, given the D.C. Circuit's reaction to the FCC's exemption for carriers with revenues under $100 million annually. If the FCC is to allocate a per-phone obligation, it should do so equitably among all carriers. *See* AT&T Comments at 3.

Even if the FCC uses an allocation method, the presubscribed IXC should pay for any 0+ calls generated from RBOC payphones for which the PSP was otherwise uncompensated on a per-call basis. AT&T Comments at 4; Cable & Wireless Comments at 8-9. WorldCom appears to suggest that the Commission could instead simply allocate a higher per-phone obligation among all carriers to account for 0+ calls (WorldCom Comments at 9-10), but this method is plainly flawed. 0+ calls are routed exclusively to the presubscribed carrier for a given payphone, and it is that presubscribed carrier that should be responsible for payment, no one else. Moreover, the Commission has already correctly found that IXCs have always been capable of tracking 0+ calls from payphones (*see* AT&T Comments at 4 (citing *April 3 Waiver Order*, 13 FCC Rcd at 10903, ¶ 18 n.52)); the parties should accordingly be able to determine actual obligations, rather than using an average.

IV. THE COMMISSION SHOULD MAINTAIN THE INTEREST RATE SET IN PRIOR ORDERS

Sprint and WorldCom ask the Commission to abandon its use of an 11.25% interest rate in favor of the IRS rate. *See* Sprint Comments at 5; WorldCom Comments at 12. The Commission has declined that suggestion in the past, and it should do so again here. The Commission clearly explained its decision to adopt the 11.25% rate in its *Second Report and Order*.[12] Any delay in compensation imposes capital costs on PSPs. The Commission therefore determined that the rate of compensation for such delay should be set equal to the authorized rate of return for LECs, that is, their weighted average of debt and equity costs. *See Second Report and Order*, 13 FCC Rcd at 1805-06, ¶ 60. That rate had been determined in an elaborate

[12] Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 1778 (1997).

rulemaking,[13] and Sprint does not challenge its validity. Indeed, if anything, the use of the authorized rate of return was conservative, because the cost of capital for independent PSPs is likely to be considerably higher than the 11.25% rate the Commission adopted. *See id.* at 1806, ¶ 60 & n.160.

Sprint and WorldCom now claim that the Commission instead should have used the IRS rate, which it applies in the case of refunds mandated by the Commission. But the analogy is inapt. Where a customer has overpaid on a tariff, it must be compensated for the *opportunity cost* of being deprived of the funds during the period prior to the refund. PSPs, on the other hand, incur *capital costs* when deprived of payments. In this instance, capital costs are significantly higher than opportunity costs, just as one must pay significantly higher interest to borrow money from a bank than one can earn on money deposited there.

Accordingly, the Commission should decline to reconsider the 11.25% interest rate it has applied throughout this proceeding.

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[13] *See* Order, *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 5 FCC Rcd 7507 (1990).

CONCLUSION

For the foregoing reasons, the Commission should promptly adopt an interim compensation plan as proposed by the Coalition.

Respectfully submitted,

Michael K. Kellogg
Aaron M. Panner
KELLOGG, HUBER, HANSEN, TODD
& EVANS, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036-3209
(202) 326-7900

Counsel for the RBOC Payphone Coalition

October 31, 2000

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of October 2000, I caused copies of the Reply Comments of the RBOC Payphone Coalition to be served by hand delivery (indicated by asterisk) or by first-class mail, postage prepaid, on the following parties:

David M. Burke

Federal Communications Commission	Chief, Competitive Pricing Division* Common Carrier Bureau 445 12th Street, S.W. Room 5-A225 Washington, D.C. 20554
International Transcription Services	ITS* 1231 20th Street, N.W. Washington, D.C. 20036
American Public Communications Council	Albert H. Kramer Robert F. Aldrich American Public Communications Council 2101 L Street, N.W. Washington, D.C. 20037
AT&T Corp.	Mark C. Rosenblum Richard H. Rubin AT&T Corp. Room 1127M1 295 N. Maple Avenue Basking Ridge, NJ 07920
Cable and Wireless USA, Inc. Global Crossing North America, Inc.	Steven A. Augustino Darius B. Withers Kelley Drye & Warren LLP 1200 19th Street, N.W. Suite 500 Washington, D.C. 20036

Excel Communications, Inc. IDT Corporation Network Plus, Inc. Starpower Communications, LLC RCN Telecom Services, Inc.	Ky E. Kirby Kathleen L. Greenan Gregg Strumberger Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W. Suite 300 Washington, D.C. 20007
One Call Communications, Inc.	Cheryl A. Tritt Frank W. Krogh Morrison & Foerster LLP 2000 Pennsylvania Avenue, N.W. Washington, D.C. 20007
Sprint Corporation	Leon M. Kestenbaum Jay Keithley Richard Juhnke Sprint Corporation 401 9th Street, N.W. Suite 400 Washington, D.C. 20004
WorldCom, Inc.	Lawrence Fenster WorldCom, Inc. 1801 Pennsylvania Ave., N.W. Washington, D.C. 20006